UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

TRANSLink Development Company, LLC Docket No. ER03-83-000

# ORDER ACCEPTING PROPOSED TARIFF AMENDMENTS, AS MODIFIED, AND ESTABLISHING HEARING PROCEDURES

(Issued December 19, 2002)

1. In this order, the Commission: accepts, as modified, proposed schedules to Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) open access transmission tariff (OATT), for service on the TRANSLink Transmission Company, LLC (TRANSLink) transmission system; nominally suspends the proposed schedules to become effective December 24, 2002,[1] subject to refund; and establishes hearing procedures. We will establish settlement judge proceedings, and will, however, hold the hearing in abeyance, pending the completion of settlement judge procedures.

2. This order is one of four interrelated orders that the Commission is acting on today which increase the size and scope of the Midwest ISO and further the development of viable for-profit independent transmission companies (ITCs) that operate and perform certain functions under the Midwest ISO.[2] Today's orders, when fully implemented, will increase the Midwest ISO's footprint and allow customers one-stop shopping for service under a single tariff covering the Midwest ISO, Southwest Power Pool (SPP), TRANSLink and the GridAmerica Participants. (See map in Attachment to this order).

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[1]December 24, 2002 is the earliest date allowed under the FPA.

[2]The following orders will be issued concurrently with this order: Ameren Services Company, et al., Docket Nos. ER02-2233-001and EC03-14-000; Midwest Independent Transmission System Operator, Inc., Docket No. ER03-86-000; and Midwest Independent Transmission System Operator, Inc., Docket No. ER02-1420-003, ER02-1420-004, ER02-1420-006.

**Background**

3. In an order issued on April 25, 2002,[3] the Commission accepted, as modified, a proposal by Alliant Energy Corporate Services, Inc., (Alliant), et al.,[4] to form an ITC, TRANSLink. TRANSLink would take control of and, potentially, own certain transmission facilities currently owned by Private Power Participants, as well as certain transmission facilities currently owned by Nebraska Public Power District (NPPD) and Omaha Public Power District (OPPD) (collectively, Public Power Participants) and Corn Belt Power Cooperative (Corn Belt or Cooperative Power Participant). TransLink would initially operate three regions: a South Region, consisting of the area currently served by Xcel Energy affiliate - SPS, located in SPP; a West Region, consisting of the area currently served by Xcel Energy affiliate - PSCo, located in the Western Interconnection; and a North Region, consisting of the areas currently served by Alliant West, MidAmerican, NSP Companies, NPPD, OPPD and Corn Belt, and which is proposed to operate as part of the Midwest ISO.

4. In the April 25 Order, the Commission, among other things, rejected TRANSLink's proposal to maintain its own tariff. The April 25 Order, however, allowed TRANSLink to maintain a separate schedule within the Midwest ISO OATT, to facilitate different rates and a different rate design for transactions that source and sink within TRANSLink's footprint, and provided guidelines that TRANSLink should follow in developing its schedule.[5] The Commission stated that TRANSLink's filing of its separate schedule must justify its differences from the Midwest ISO OATT and explain how regional uniformity is not harmed. The Commission further stated that its review of TRANSLink's proposed schedule would be guided by the goal of providing transmission

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[3]TRANSLink Transmission Company, L.L.C., 99 FERC ¶ 61,106 (2002) (April 25 Order), order on reh'g, 101 FERC ¶ 61,140 (2002).

[4]The proposal was submitted by Alliant on behalf of its operating company affiliates IES Utilities, Inc. (IES) and Interstate Power Company (IPC) (jointly, Alliant West); Mid American Energy Company (MidAmerican); Xcel Energy Services, Inc., on behalf of its operating company affiliates Northen States Power Company - Minnesota (NSP-M), Northern States Power Company - Wisconsin (NSP-W) (together the NSP Companies), Public Service Company of Colorado (PSCo), and Southwestern Public Service Company (SPS) (jointly Xcel Energy); and TRANSLink. Alliant West, MidAmerican and Excel Energy are hereinafter collectively referred to as "Private Power Participants".

[5]April 25 Order at 61,464.

customers with the maximum ease in use of the regional transmission network, and a pricing structure that makes sense and can be reconciled with transmission rates and rate design for the region as a whole.

5. The Commission, in the April 25 Order, also allowed TRANSLink to use, as a transitional return, the relevant state-granted return on equity (ROE) for transmission assets that would provide bundled retail service if the participant was not a part of TRANSLink, provided that the ROE falls within a zone of reasonableness. However, the Commission advised that when TRANSLink files its rates under section 205, it should fully justify that a particular requested ROE is an appropriate reflection of the ROE that the participant would be allowed on its transmission assets providing bundled retail service, and that such requested ROE falls within the zone of reasonableness. The Commission deferred consideration of proposed ROE adders to encourage participation in TRANSLink and construction of new transmission facilities, until TRANSLink's participation in Midwest ISO is finalized. [6]

6. The April 25 Order also advised TRANSLink to file additional support for its proposed three-part highway/zonal rate design when it files rates for its schedule under the Midwest ISO OATT, and to explain how its rate proposal will promote efficient use of the transmission grid compared to the conventional license plate rate design currently in place under the Midwest ISO OATT.[7] The Commission further required TRANSLink to provide a detailed description of the power flow models used to classify facilities as highway or zonal.[8] In addition, the Commission required TRANSLink to explain how the TRANSLink and Midwest ISO rates will each apply to network service customers serving

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[6]The incentive adder to encourage entities to participate in TRANSLink was linked to the extent that a participant transfers functional control of its transmission facilities to TRANSLink. A 50 basis point increment was proposed for jurisdictional participants that enter a lease or private power operating agreement; a 100 basis point increment was proposed for jurisdictional entities that contribute their assets to TRANSLink and for the other participants that transfer operational control under a long term agreement to the maximum extent allowed by law. For investment in newly constructed facilities made by TRANSLink itself, or by a participant where there is a legal limitation or restriction on TRANSLink doing so, a 200 basis point increment above the state-authorized return was proposed.

[7]Id.

[8]April 25 Order at 61,467.

load within the TRANSLink footprint from resources both within and outside of TRANSLink.[9]

**The Current Filing**

7. On October 24, 2002, TRANSLink Development Company,[10] on behalf of TRANSLink, submitted for Commission approval the TRANSLink schedules of the Midwest ISO OATT.[11] In particular, TRANSLink seeks approval of proposed rates for point-to-point and network transmission service on the TRANSLink network and rates to recover its start-up and administrative costs, including the ROEs used to calculate these rates. The instant filing also contains proposed tariff sheets related to TRANSLink's provision of emergency redispatch service and terms and conditions applicable to unbundled retail transmission service for delivery from the TRANSLink system.

8. TRANSLink requests an effective date no later than December 23, 2002.

**Notice of Filing, Interventions, Protests and Answers**

9. Notice of TRANSLink's filing was published in the Federal Register, 67 Fed. Reg. 67,167 (2002), with comments, protests, and interventions due on or before November 14, 2002. Motions to intervene were filed by American Transmission Company LLC (ATALLC); Central Iowa Power Cooperative (CIPCO); Dairyland Power Cooperative (Dairyland); Great River Energy (Great River); MidAmerican Energy Company (MidAmerican); Midwest ISO; Mirant Americans Energy Marketing LP and Mirant Zeeland, LC (jointly, Mirant Parties); Missouri River Energy Services (MRES); Wisconsin Public Service Corporation and Upper Peninsula Power Company (jointly, the Operating Companies); Rochester Public Utilities (RPU); Southern Minnesota Municipal Power Agency (SMMPA); and Westar Energy, Inc. and Kansas Gas and Electric

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[9]Id.

[10]TRANSLink Development Company was established by the TRANSLink participants on June 5, 2002, as an interim company to, among other things, centralize their efforts with regard to the establishment and formation of TRANSLink, and is representing the interests of TRANSLink prior to its formation. TRANSLink will be the ITC and the successor of TRANSLink Development (Transmittal Letter at 1, fn. 1).

[11]In a related filing made by Midwest ISO on October 24, 2002, in Docket No. ER03-86-000, Midwest ISO proposed changes to its OATT to reflect the operation of ITCs under the Midwest ISO, providing certain RTO functions on a delegated basis.

Company (jointly doing business as Westar Energy). Lincoln Electric System (Lincoln Electric) and Wisconsin Electric Power Company (Wisconsin Electric) filed motions to intervene and comments seeking clarification on numerous issues. In addition, PacifiCorp and Kentucky Public Service Commission (Kentucky PSC) filed out-of-time motions to intervene.

10. The following parties filed motions to intervene and protests: Coalition of Midwest Transmission Customers (CMTC); Detroit Edison Company (Detroit Edison); Duke Energy North America, LLC (DENA); Illinois Industrial Energy Consumers (IIEC); Industrial Energy Users-Ohio (IEU-Ohio); International Transmission Company (International Transmission); Iowa Office of Consumer Advocate (Iowa OCA); Iowa Utilities Board (Iowa Board); Minnesota Department of Commerce (MDOC); Municipal Energy Agency of Nebraska (MEAN); Public Service Electric and Gas Company (PSE&G) and PSEG Energy Resources & Trade (PSEG ER&T) (collectively, PSEG Companies); West Texas Municipal Power Agency (WTMPA); Wisconsin Public Power, Inc. (WPPI) and Madison Gas & Electric (MGE) (collectively, Wisconsin TDUs.); and Golden Spread Electric Cooperative, Inc., Holy Cross Energy, Inc., and Yampa Valley Electric Association, Inc. (collectively, Xcel Customers). Midwest Municipal Transmission Group (MMTG) also filed a protest, which it later withdrew. In addition, LG&E Energy Corp. (LG&E Energy) filed a motion to intervene out-of-time and protest.

11. On November 27, 2002, TRANSLink filed an answer to intervenors' comments and protests.

## Discussion

### A. Procedural Matters

12. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2002), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[12] given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant LG&E Energy's, Kentucky PSC's and PacifiCorp's untimely, unopposed motions to intervene.

[12] 18 C.F.R. § 385.214(d) (2002).

13. Further, while Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[13] prohibits answers to protests unless otherwise permitted by the decisional authority, we find that good cause exists to allow TRANSLink's answer, as it provides additional information that assists us in the decision-making process.

### B. Compliance Regarding Non-Tariff and Non-Rate Issues

14. Protestors urge the Commission to refrain from ruling on the instant filing until TRANSLink has submitted further filings that fully comply with the April 25 Order. They cite to, among other things, the directives in the April 25 Order regarding TRANSLink's board selection process and other issues concerning TRANSLink's independence from market participants.[14] We will not defer action on the instant filing as these entities request. TRANSLink indicates that it will be submitting a separate filing that will address the non-tariff and non-rate issues identified in the April 25 Order. We will address compliance with the non-tariff and non-rate directives of the April 25 Order after such separate filing is made.

### C. Three-Part Highway/Zonal Rate Design

#### i. TRANSLink's Proposal

15. TRANSLink has provided additional information describing its proposed rate design and clarifying the methodology that it used to designate facilities as highway or zonal. TRANSLink also addresses the Commission's concerns about the impact that such a rate design would have on efficient utilization of the transmission facilities.

16. Under TRANSLink's proposed rate design, both network and point-to-point transmission service customers would pay a single non-pancaked charge consisting of three components: (1) a highway component; (2) a supply-zone component; and (3) a load-zone component. There are initially six pricing zones reflecting the systems of the three Private Power Participants (Alliant-West, Mid-American, and NSP Companies),

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[13]18 C.F.R. § 385.213(a)(2) (2002).

[14]On November 14, 2002, TRANSLink submitted an informational filing detailing the manner in which it intends to comply with certain requirements regarding the selection of directors and Board Observers. We will consider this filing when TRANSLink makes its filing addressing non-tariff and non-rate issues. We remind TRANSLink that, when it makes that filing, it should submit any changes made to the relevant corporate documents to comply with the requirements of the April 25 Order.

two Public Power Participants (NPPD and OPPD), and one Cooperative Power Participant (Corn Belt), in the North Region.

17. The highway component reflects the cost of the bulk power transmission system facilities deemed to support transfers of energy between zones. TRANSLink proposes to designate all non-radial transmission system facilities operating at voltages greater than 200 kV as highway facilities, and proposes fixed percentages for each zone to allocate the cost of transmission system facilities operating at voltages between 100 kV and 200 kV to the highway component. No transmission system facilities operating at voltages below 100 kV are deemed to perform a highway function.[15] The cost of existing highway facilities will be reflected in the highway component on a license plate basis during the remainder of the six-year transition period under the Midwest ISO OATT (i.e., through January 31, 2008); reflection of the cost of existing highway facilities in the highway component on a postage stamp basis will be phased in over a four-year period following the transition period. The cost of all new highway facilities that enter service after the effective date will be immediately reflected in the highway component on a postage stamp basis.

18. The supply-zone component reflects the cost of facilities deemed to support the transfer of power from generators to the highway system. Under the proposal, 50 percent of the cost of transmission system facilities operating at voltages above 100 kV that are not allocated to the highway component will be allocated to the supply-zone component. For any particular transaction, the customer would be assessed the supply-zone component for the zone where its transaction originates.

19. The load-zone component reflects the cost of facilities deemed to support the transfer of power from the highway system to load. Under the proposal, 50 percent of the cost of transmission system facilities operating at voltages above 100 kV that are not allocated to the highway component and 100 percent of the cost of transmission system facilities operating at voltages less than 100 kV will be allocated to the load-zone

[15]As initially proposed, the rate design included a provision to allocate a portion of the cost of highway facilities to the supply-zone component if there was more generation than load in the zone. This mechanism has been eliminated. In its place, TRANSLink proposes a provision for it to: (1) review the impact on the highway rates resulting from the addition of a new TRANSLink participant; and (2) propose appropriate adjustments to the rate design to mitigate any undue impacts resulting from the addition of a new TRANSLink participant. (Section 2.2 of Attachment V.1 - TRANSLink, Original Sheet No. 636).

component. For any particular transaction, the customer would be assessed the load-zone component for the zone where its transaction terminates.

20. TRANSLink provides a description of the power flow studies that it used to determine the extent to which each participant's transmission system facilities in different voltage classes perform a highway or zonal function. TRANSLink states that this analysis confirmed that all non-radial transmission system facilities operating at voltages of 230 kV and above, and no transmission system facilities operating at voltages below 100 kV, perform a highway function and provided the basis for the percentage allocations for all networked transmission system facilities operating between 115 kV and 161 kV.

21. TRANSLink states that the conventional license plate rate design employed by Midwest ISO, while eliminating rate pancaking by charging a single rate based on the destination of the transaction, does not align costs and revenues for inter-zonal transactions because it does not require a customer to pay for the costs of each of the systems that the customer uses and does not allocate revenues from each particular transaction to all owners of the facilities used by the transaction.[16] As such, according to TRANSLink, the conventional license plate rate design does not encourage investment in new highway facilities because the party building the new facilities will often see little, if any, of the revenue from the use of those facilities because they will often be used by customers with transactions terminating in zones other than the zone where the new facilities are constructed. In addition, TRANSLink argues, with respect to existing facilities, the conventional license plate rate design sends no “price signal” to transmission customers, since the charges reflect only the costs of the system where delivery occurs, and not all of the systems actually used.

22. TRANSLink states that it believes that its proposed rate design more accurately recovers the costs of facilities on the basis of their use, and distributes revenues to the appropriate pricing zone where the cost was incurred, thereby mitigating inequitable cross-subsidization that would otherwise result from the Midwest ISO’s conventional license plate rate design. In addition, TRANSLink submits that the proposed rate design, by recovering the costs of new facilities on a wider regional basis, avoids adding

[16]Application Exhibit DGB-100 at 8-9. Under Midwest ISO's conventional license plate rate design, the rate for delivery within Midwest ISO reflects the cost of transmission facilities in the pricing zone where delivery occurs, and the revenues from service with delivery within a particular pricing zone are distributed to the transmission owners whose facilities constitute the pricing zone.

obstacles to the already daunting task of obtaining approval for new transmission facilities.

23. TRANSLink believes that its rate design employs concepts similar to those discussed in the Commission's recent Standard Market Design (SMD) notice of proposed rulemaking issued on July 31, 2002,[17] requesting comments on a rate design that would eliminate charges between regions and replace those charges with an allocation of a portion of the revenue requirement from the source region, where the transaction originates, to the sink region, where energy is delivered.[18] However, TRANSLink continues, in contrast with the rate design proposed in the SMD NOPR, TRANSLink's proposed rate design would directly collect costs for use of facilities for transactions sinking in other zones from the transacting party, rather than assessing the costs to all customers in the sink zone.

24. TRANSLink supplies several examples to clarify the application of its rate design to network customers. If all of the resources and load are within the TRANSLink footprint, then the TRANSLink rate schedules would apply to all of the customer's load. To the extent that a customer serves load in one zone from network resources located in multiple supply zones within TRANSLink, the supply-zone charge will be prorated among the TRANSLink pricing zones, based on the proportion of network resources in each pricing zone. To the extent that a customer takes network service to serve loads within the TRANSLink footprint from resources both within the TRANSLink footprint and outside of the TRANSLink footprint, it will pay the applicable charges under the TRANSLink and Midwest ISO schedules, prorated based on the proportion of the customer's designated network resources that are within and outside of the TRANSLink footprint.

**ii. Intervenors' Comments**

25. CMTC argues that TRANSLink fails to provide adequate support for its three-part transmission rate proposal. It submits that the criticisms that TRANSLink levies against Midwest ISO's conventional license plate rate design would have validity against virtually any transmission rate design that stopped short of a flow-based transmission pricing mechanism. DENA is concerned that the supply-zone component for each

[17]Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 Fed. Reg. 55,452 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 (2002) (SMD NOPR).

[18]SMD NOPR at P 186-88.

transaction varies based on the location of the generator and that this will create a bias for purchases from generators located in regions with lower embedded zonal facility costs, thereby distorting economic choices and hindering efficient utilization of resources. In an efficient market, DENA argues, the generator with the lowest marginal operating and marginal delivery cost (e.g., losses and congestion) should be called upon to serve load. DENA contends that the proposed rate may result in increased congestion as loads that have historically relied on generators within the same zone seek out suppliers in zones with lower supply zone rates. DENA states that it supports the Commission's objective of minimizing the distorting effects that access charges have on economic choices, as expressed in the SMD NOPR.

26. MEAN argues that the use of a license plate rate design for the cost of existing highway facilities is at odds with TRANSLink's overall rate design and that the recovery of the costs of existing highway facilities will not reflect the function of those facilities or cost causality. It maintains that there is no more reason to wait to begin phasing in postage stamp rates for the costs of existing highway facilities than there is to defer reflection of the costs of new highway facilities on a postage-stamp basis. MEAN further argues that, given the wide disparity in license plate highway rates, the proposal violates the prohibition against undue discrimination under the Federal Power Act and also violates the Commission's policy favoring rolled-in rate treatment for embedded costs of integrated grid facilities.

27. PSEG Companies urge the Commission to ensure that the proposed three-part rate design: (1) does not result in inappropriate cost shifts; (2) is compatible with locational marginal pricing (LMP); (3) promotes seamless transmission service across the RTO region; and (4) allows the market to provide signals necessary for market driven solutions. They propose that the Commission convene a technical conference to examine the impact of the proposed rate design on the Midwest ISO region.

28. Wisconsin TDUs argue that the calculation of network service charges remains unclear. They contend that it is unclear what period will be used to calculate the ratio of designated resources in different pricing zones and what measure of generation capacity will be used to perform that calculation. Wisconsin TDUs, therefore, seek clarification of the methodology that will be used to prorate network load between different supply-zone charges and between the TRANSLink and Midwest ISO schedules.

29. Several protestors question the validity of the assumptions used in the power flow analysis and the criteria used to designate facilities as highway or zonal.

30. Xcel Customers state that they are not clear how their existing transmission service arrangements will be integrated with service provided by TRANSLink and whether the highway/zonal rate design is appropriate in the SPS and PSCo areas. Xcel Customers request that the Commission's action in this proceeding be non-precedential for service over the TRANSLink South Region and TRANSLink West Region facilities.

### iii. TRANSLink's Answer

31. In response to DENA's concern that TRANSLink's rate design will result in a higher supply-zone rate for transactions that originate in some supply zones than for those that originate in other supply zones, TRANSLink states that this is entirely appropriate, as it reflects the fact that deliveries from generation located on portions of the TRANSLink system where the lower voltage facilities are more costly have greater use of those higher cost facilities than generation located elsewhere.[19] Accordingly, TRANSLink contends, consistent with Commission policy and precedent, its proposed rate design better aligns cost responsibility with cost causation. Moreover, according to TRANSLink, the price differentials produced by the TRANSLink rate design will serve at least three additional purposes: (1) they will require that customers transmitting energy from generators located in a higher cost zone contribute to the higher transmission system costs in that zone; (2) they will help mitigate the transmission congestion that can result from license plate rates, which encourage customers to use distant generation irrespective of the transmission congestion impacts on intervening systems; and (3) they will remove a significant impediment to the construction of new transmission to the extent that users throughout the region will contribute to the cost of new regional highway facilities that facilitate trading and larger regional markets.

32. TRANSLink states that it is entirely appropriate that customers should consider the cost of transmission, as well as the cost of generation, when considering where to purchase power, as they will naturally do under a congestion management system that assesses costs on those that cause it. Likewise, TRANSLink believes that generators should consider the cost they impose on the transmission infrastructure when they decide where to site new generation.[20]

33. In response to Xcel Customers' concern that acceptance of the proposed rate design be non-precedential with regard to service over TRANSLink South and TRANSLink West facilities, TRANSLink states that the proposed rate design, as filed in

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[19] Answer at 7-8.

[20] Id. at 8.

the instant proceeding, is applicable only to TRANSLink systems in the TRANSLink North Region. While TRANSLink indicates that it intends to propose rates for the South Region based on the currently proposed rate design, once the SPP/Midwest ISO merger is consummated and the SPS system becomes part of Midwest ISO, that would be the subject of a future filing. Likewise, TRANSLink contemplates a later, separate tariff or rate schedule filing that would establish TRANSLink as an independent administrator of Xcel Energy's open access tariff for the PSCo system, pending the establishment of an RTO in which TRANSLink could participate with respect to the PSCo system.[21]

34. In response to intervenors' request for clarification of the measure of network resources that will be used to prorate charges to network load served from resources in different supply zones or both within and outside of the TRANSLink footprint, TRANSLink clarifies that this prorating will be performed using designated network resource capacity values coincident with the hour that determines Network Load for that month under each rate schedule.[22]

**iv. Discussion**

35. TRANSLink's proposal addresses certain shortcomings of conventional license plate rate design. TRANSLink's proposed rate design attempts to combine the advantages of the license plate and postage stamp rate concepts into one rate design. The rate design eliminates rate pancaking and more closely allocates embedded costs based on the usage of particular facilities than rates that reflect the costs of all transmission facilities on a license plate basis. The postage stamp design for new highway facilities can help mitigate disincentives to new investment to support transactions benefitting load in another pricing zone. In addition, to the extent that the functional analysis holds up, the highway/zonal split may serve as a reasonable basis to transition to postage stamp rates.

36. In contrast to the conventional license plate rates, in which a uniform rate applies for all deliveries to load at a particular location, regardless of the location of the resource, TRANSLink's proposed supply-zone component would result in different rates to serve load at a particular location depending on the zone in which the resource is located. TRANSLink argues that its rate design is justified because the supply-zone component better aligns cost responsibility with cost causation, consistent with Commission policy and precedent. However, because the supply-zone charge will reflect embedded costs, it

[21] Id. at 11-12.

[22] Answer at 30.

may serve as an imperfect price signal to foster efficient use and expansion of the grid, and, because it varies by transaction, it may distort economic decisions, resulting in inefficient use of existing grid facilities and expansion of the grid. In the SMD NOPR, the Commission stated that its goal for the design of access charges that recover embedded costs is to minimize the distorting effects that these access charges can have on economic choices[23] and that, in a competitive market environment, reliability and the supplier's cost of generation, rather than sunk transmission costs, should be the primary drivers for a customer's choice of power suppliers.[24] We note that Midwest ISO is currently planning to commence operation of an energy market with LMP in December 2003. In addition, we note that LMP and participant funding for new transmission facilities are currently being discussed in the SMD and generation interconnection rulemaking proceedings.[25] We believe that such rate features can provide meaningful price signals for efficient use and expansion of the grid, and we are concerned that TRANSLink's proposed rate design could interfere with such signals.

37. We will, therefore, accept the proposed rate design for TRANSLink's initial operation under Midwest ISO prior to the commencement of Midwest ISO's energy markets. However, we will require Midwest ISO and TRANSLink to each submit reports to the Commission, at least 60 days prior to the commencement of Midwest ISO's energy markets: (1) addressing the impacts that TRANSLink's rate design may have on the efficient operation of Midwest ISO's markets and utilization of the transmission system; and (2) justifying TRANSLink's rate design's continued reasonableness beyond the commencement of Midwest ISO's energy markets. On the basis of those reports, we will decide whether it is appropriate to allow the proposed rate design to continue in effect beyond the commencement of Midwest ISO's energy markets. In addition, while we accept TRANSLink's proposed rate design, we will make it subject to the outcome of the SMD rulemaking proceeding.

38. In addition, the reasonableness of TRANSLink's proposed highway/zonal rate design depends on TRANSLink's functional analysis and designation of facilities as highway or zonal. The proposed designation of facilities as highway or zonal is based on

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[23]SMD NOPR at P 169.

[24]SMD NOPR at P 183.

[25]Standardizing Generator Interconnection Agreements Procedures, Notice of Proposed Rulemaking, 99 FERC ¶ 61,086 (2002), RM02-1-000, 67 Fed. Reg. 22,250 (Apr. 24, 2002), FERC Stats. & Regs., Proposed Regulations ¶ 32,560 (2002) (Interconnection Rulemaking proceeding).

power flow analysis reflecting numerous simplifying assumptions. In the hearing that we order below, the participants should address the reasonableness of that analysis and the resulting designations.

39. We believe that TRANSLink's proposal to prorate network service charges to loads served from resources located in different supply zones, or located within and outside of TRANSLink, based only on designated resource capacity at the time of the monthly coincident peak load, could result in customers' gaming the dual rate regimen by changing network resource designations on a short-term basis at the time of the monthly peak. Instead, such prorating should be done by weighting designated network resource capacity over all hours of the month. In addition, while TRANSLink attempts to clarify such prorating of TRANSLink and Midwest ISO schedules in Section 4 of Attachment V.1 - TRANSLink, it does not supply tariff language clarifying how supply-zone components would be prorated for load served from network resources in multiple pricing zones. We will, therefore, direct TRANSLink to file revised tariff sheets, within 60 days of the date of this order, modifying Section 4 of Attachment V.1 - TRANSLink to clarify that: (1) for load served from network resources in multiple pricing zones, the supply-zone components will be prorated based upon the designated network resource capacity in each supply zone, weighted over all hours of the month; and (2) for load served from network resources located both within and outside of TRANSLink, the TRANSLink and Midwest ISO schedules will be prorated based upon designated network resource capacity located within and outside of TRANSLink, weighted over all hours of the month.

### D. Base ROE

#### i. TRANSLink's Proposal

40. TRANSLink notes that, in the April 25 Order and in Order No. 2000, the Commission recognized that utilities will not transfer ownership or control of their assets to an independent entity subject to the Commission's rate jurisdiction and commit to take all transmission services subject to that entity's tariff, knowing that their authorized rate of return may decline, and that, therefore, in the April 25 Order, the Commission allowed TRANSLink participants to adopt the state-granted ROE to eliminate such financial harm due to RTO participation. Consistent with this principle of no financial harm, TRANSLink contends that the ROE for TRANSLink participants currently participating in Midwest ISO should at least equal the return available through direct participation in the RTO. Therefore, TRANSLink proposes a 12.88 percent ROE on existing transmission assets owned by those TRANSLink participants who are also Midwest ISO transmission owners, consistent with the ROE that the Commission recently determined to be appropriate for the Midwest ISO transmission owners in Docket No. ER02-485-

000.[26] Moreover, for utilities that are not currently participating in an RTO, TRANSLink argues that the return should equal the higher of the utility's state-authorized, or allowed return or the return that it could earn through direct participation in the Midwest ISO (i.e., the 12.88 percent approved for all Midwest ISO transmission owners).

41. Only MidAmerican opts to adopt the state-granted ROE. It proposes a ROE of 13.71 percent, based on a weighted average of its 2001 earned and allowed returns in Iowa under an incentive-based revenue sharing program, in South Dakota pursuant to a recent settled natural gas general rate case, and in Illinois under a statutory rate freeze. Consistent with the April 25 Order, TRANSLink seeks to demonstrate that the proposed ROE is within the zone of reasonable ROEs for MidAmerican by providing an updated discounted cash-flow (DCF) analysis for Midwest ISO transmission owners (because the only TRANSLink participants with publicly traded shares are already Midwest ISO participants, the proxy group is the same as was utilized by the Commission in Docket No. ER02-485-000).

**ii. Intervenors' Comments**

42. Some protestors claim that TRANSLink has failed to meet the requirements of 18 C.F.R. § 35.34(e)(1) for innovative rate proposals. They recommend that the Commission reject MidAmerican's use of the state-granted ROE or, alternately, set it for hearing.

43. MDOC opposes deviation from the original proposal to adopt state-granted ROEs for those TRANSLink participants with state-granted ROEs less than 12.88 percent. It states that NSP recently made commitments before the Minnesota Public Utilities Commission (MPUC) to use the state commission-approved cost of capital in present and future filings before the Commission, and that this commitment was accepted by MPUC in an October 22, 2002 order.

44. For similar reasons, Iowa OCA and Iowa Board protest MidAmerican's use of its earned ROE under an incentive-based revenue sharing plan in Iowa. They submit that MidAmerican made commitments, in the settlement providing for use of the incentive-based revenue sharing plan, that use of the plan would not establish a "state-authorized return" for the purpose of setting rates for Commission-jurisdictional transmission service. Iowa Board states that it explicitly relied upon this commitment in its order

[26] See Midwest Independent Transmission System Operator, Inc., 100 FERC ¶ 61,292, reh'g pending (2002).

approving the settlement and that the order approving the settlement specifically mentions TRANSLink's earlier proposal to adopt state-granted ROEs as the genesis for this condition.

45. In addition, they claim that MidAmerican's earned return under the plan is made possible only through revenues generated from the sale of excess power. They also submit that returns under the incentive-based revenue sharing program resulted from the performance-based style of ratemaking, including MidAmerican's bearing the risk of earning a low return for poor performance, and argue that it is inappropriate to build this earned return into a rate without such incentive characteristics.

46. Further, protesters object to MidAmerican's failure to limit use of the state-granted ROE to a period ending December 31, 2004, consistent with Section 35.34 of the regulations, and object to various aspects of the DCF analysis used to support the zone of reasonableness for MidAmerican's ROE.

### iii. TRANSLink's Answer

47. In response to those who object to TRANSLink's proposal to allow participants the option to adopt the 12.88 percent ROE recently approved for Midwest ISO transmission owners, TRANSLink states that, in the April 25 Order, the Commission did not approve TRANSLink's initial proposal, but instead indicated that it would determine an appropriate ROE for TRANSLink once TRANSLink submitted additional support for its rate design and proposed ROE. Therefore, TRANSLink maintains, it is well within its purview to update its proposal. It states that, given the Commission's recent approval of the 12.88 percent ROE for Midwest ISO transmission owners, it was necessary for TRANSLink to modify its proposal so that participation in TRANSLink is not less attractive than direct participation in Midwest ISO.[27]

48. In response to the Iowa Board's objection to the adoption of the ROE earned under a performance-based rate for used in a rate without performance-based characteristics, TRANSLink argues that the Iowa Board's concerns are misplaced, as no aspect of this proceeding will modify the current rate freeze for MidAmerican's Iowa electric retail rates.[28] Rather, TRANSLink submits, this proceeding will only determine transmission costs that MidAmerican and other wholesale entities will incur when they utilize the MidAmerican transmission system. TRANSLink notes that, since NSP is a current

[27] Answer at 14-15.

[28] Id. at 19.

Midwest ISO transmission owner and a party to the proceeding which resulted in the 12.88 percent ROE, the Commission has already approved NSP's use of the 12.88 percent ROE for calculating its transmission rates for service under the Midwest ISO OATT. Therefore, TRANSLink maintains, there is no impropriety in NSP's seeking to maintain that ROE as a TRANSLink participant.

#### iv. Discussion

49. We will accept TRANSLink's proposal to allow participants to adopt the 12.88 percent ROE recently approved for Midwest ISO transmission owners in Docket No. ER02-485-000. To reject this proposal would make participation in TRANSLink less attractive than direct participation in Midwest ISO, and, given the benefits that we expect to result from the ITC business model, it would be illogical to do so.

50. With regard to MDOC's claim that recent commitments by NSP to the MPUC limit NSP to using the state commission-approved cost of capital in present and future filings before the Commission, MDOC has not provided any evidence of these commitments. Therefore, we will accept TRANSLink's proposal for NSP to use the 12.88 percent ROE recently approved for Midwest ISO transmission owners.

51. We will reject MidAmerican's proposed 13.71 percent ROE. Neither TRANSLink or MidAmerican have provided any support demonstrating that this ROE represents the ROEs allowed by the relevant state commissions for transmission investment providing bundled retail service. In particular, MidAmerican has not demonstrated that the returns it claims to have earned over a one-year period under the Iowa incentive-based revenue sharing program represent the ROE granted by the Iowa Board for transmission assets providing bundled retail service. We will direct TRANSLink to utilize the 12.88 percent ROE recently approved for Midwest ISO transmission owners for MidAmerican. This action is without prejudice to TRANSLink and MidAmerican making a filing to seek an ROE based on the state-granted ROE for transmission assets providing bundled retail service, with appropriate support.

### E. ROE and Depreciation for New Investment

#### i. TRANSLink's Proposal

52. For newly constructed transmission assets, TRANSLink seeks a 13.5 percent ROE and an accelerated depreciation period of 25 years. TRANSLink also proposes to use the 13.5 percent ROE to establish the return on unamortized start-up costs included in TRANSLink's administrative cost adder. It states that these higher rates of return are

necessary for a new start-up company to attract capital needed to expand the grid. It argues that this is particularly important for TRANSLink because its planned new investments are projected to greatly exceed the amount of depreciation on current plant investment during the first several years of operation.

53. In addition, TRANSLink submits that much of the investment in new transmission infrastructure is necessary to enable new generation to connect to the grid and for load-serving entities to access that generation, and that new generating facilities are depreciated over shorter periods than the 40-year schedule traditionally used for transmission assets. Therefore, it argues, use of the shortened depreciation schedule for new facilities is appropriate in order to align the depreciation schedule for transmission assets to the depreciable lifetimes of the generating assets that they support.

### ii. Intervenors' Comments

54. Protesters submit that consideration of the proposed incentives for new investment is premature, as the conditions for such consideration established in the April 25 Order have not been satisfied (e.g., TRANSLink's participation in Midwest ISO has not been finalized, stakeholder input has not been solicited or considered, a cost-benefit analysis, as required by 18 C.F.R. § 35.34(e)(1), has not been submitted, and there has been no outcome yet from the stakeholder process addressing similar issues raised in Midwest ISO's filing in Docket No. ER02-485-000). CMTC argues that, in contrast with incentives provided for new infrastructure in the West, TRANSLink's proposed incentive is not associated with construction of any specific facility that is contingent upon the outcome of this proceeding. MEAN states that it would be open to appropriate incentives for limited facilities if they were part of a balanced incentive structure that included downside penalties for non-performance. Further, MEAN argues that there is no need for the proposed 13.5 percent ROE on TRANSLink formation costs, as these costs have already been incurred and, in this case, the incentive would serve no purpose.

### iii. Discussion

55. We will reject TRANSLink's proposed ROE and depreciation schedule for new investment. The Commission stated in the April 25 Order that it will consider TRANSLink's incentive adders at the time that its participation in Midwest ISO is finalized, anticipating that its consideration at that time will be better informed by the stakeholder process addressing the Midwest ISO's innovative rate proposal filed in Docket No. ER02-485-000. By its own admission, TRANSLink is still a number of months away from finalizing its participation in Midwest ISO. We will, therefore, reject TRANSLink's proposed ROE and depreciation schedule for new investment and

unamortized start-up costs. TRANSLink is directed to file revised tariff sheets, within 60 days of the date of this order, modified to reflect a 12.88 percent ROE for new investment and unamortized start-up costs. Our rejection of TRANSLink's proposed ROE and depreciation schedule for new investment is without prejudice to TRANSLink's resubmitting rate treatments targeted at new investment at a later date.[29]

### F. Revenue Requirement Formulas

#### i. TRANSLink Filing

56. TRANSLink states that the rates for services under the TRANSLink schedules are designed to recover TRANSLink's direct costs for owning and controlling transmission facilities plus any payments made by TRANSLink to the participants under asset contribution, lease or operating agreements. TRANSLink proposes to establish the revenue requirements associated with TRANSLink's direct costs, as well as the costs to be recovered by each participant under asset contribution, lease or operating agreements, through cost of service formula rates that, it claims, are based on the formula rate templates in Attachment O to the Midwest ISO OATT, with certain modifications to reflect varying state regulatory or individual participant accounting policy or operating characteristics.[30] The specific type of organization (e.g., investor-owned, public power or cooperative) determines the template to be used in determining each entity's revenue requirement. The formula rates will be adjusted each month, based on historical data for the preceding twelve months. The updated rates will be posted on the Midwest ISO OASIS.

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[29]The Commission recently announced that it plans to clarify its incentive rate policy in the near future with concrete statements of the behavior and performance it wishes to encourage. See Midwest Independent Transmission System Operator, Inc., 100 FERC ¶ 61,292, reh'g pending (2002).

[30]For instance, TRANSLink states that the formulas have been modified to reflect the treatment of income tax normalization issues in the states where each participant operates and that, in this regard, the formulas applicable to MidAmerican and IPL have been modified to allow recovery of amounts associated with benefits arising from tax-book timing differences that were previously flowed-through in retail rates. In addition, TRANSLink states that the formula applicable to MidAmerican has been modified in certain instances where MidAmerican maintains accounts in greater detail than assumed by the Midwest ISO's Attachment O formulas.

**ii. Intervenors' Comments**

57. Protestors raise concerns with various aspects of the proposed rate formulas. Several protesters object to the use of monthly adjustments to the rates, arguing that it will make it difficult for customers to budget for anticipated charges and monitor implementation of the formulas to ensure that they are being implemented properly and that costs being recovered through the formulas were reasonably and prudently incurred. Protestors also argue that a number of the formula inputs are not adequately set forth in detail in the Form 1, or equivalent reports filed by cooperative and public power entities, and that it is unclear how such inputs will be determined. MEAN submits that NPPD's rate divisor excludes demands associated with a significant amount of long-term firm service and argues that TRANSLink has not adequately supported the margin sought for NPPD.[31]

**iii. Discussion**

58. Protestors have raised numerous material issues of fact regarding the cost of service and rate formulas that cannot be adequately resolved based on the record before us and are more appropriately addressed in the hearing established below.

**G. Administrative Cost Adder**

**i. TRANSLink's Proposal**

59. TRANSLink's proposed administrative cost adder consists of two components, one providing for recovery of TRANSLink's start-up costs and ongoing administrative costs and one providing for pass-through of charges that TRANSLink incurs for the purchase of unbundled RTO services from Midwest ISO. TRANSLink states that the Midwest ISO component would only be applied to load under the Midwest ISO OATT within the TRANSLink system. It states that, because only 90 percent of the load within TRANSLink will be under the Midwest ISO tariff, and the remaining load will be subject

[31]The formula proposed for NPPD develops NPPD's cost-of service on a "cash flow" basis. Under the optional cash flow formula in Attachment O to the Midwest ISO OATT, actual debt service requirements are reflected in the revenue requirement rather than application of a rate of return to rate base. In addition to principal and interest due on debt, the cash flow formula in the Midwest ISO OATT allows an additional margin as required by bond covenants or consistent with rates applicable to the transmission owner's sales to native load. This additional margin requirement is supported and reviewed on a case-by case basis.

to grandfathered agreements, the divisor for the Midwest ISO component has been reduced by approximately 10 percent.[32]

### ii. Intervenors' Comments

60. MEAN argues that TRANSLink has inappropriately excluded grandfathered loads from the denominator of the component providing for recovery of the Midwest ISO charges.

### iii. Discussion

61. We agree with MEAN that TRANSLink's proposal to exclude grandfathered loads from the divisor of the administrative cost adder is inappropriate and is inconsistent with the Commission's findings in Opinion No. 453 that Midwest ISO's administrative costs should be allocated to grandfathered loads.[33] We will, therefore, direct TRANSLink to file revised tariff sheets, within 60 days of the date of this order, modified to clarify that grandfathered loads will be included in the denominator used to derive TRANSLink's administrative cost adders.

## H. Emergency Redispatch Service

### i. TRANSLink's Proposal

62. TRANSLink proposes provisions for the redispatch of generation, in response to emergency or unexpected conditions, to prevent the TRANSLink transmission system from operating in a non-secure state and to return the TRANSLink transmission system to a secure state following an emergency or unexpected condition. Such redispatch would continue until Midwest ISO's congestion relief systems or NERC Transmission Loading Relief (TLR) procedures can be applied. TRANSLink proposes that it will receive pricing data from the Midwest ISO to the extent that generators are submitting such data to Midwest ISO; otherwise generators would submit pricing data directly to TRANSLink. If a generator does not have Commission-authorized market-based rates, cost-based

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[32]Exhibit JDW-100 at 39-40.

[33]See Midwest Independent Transmission System Operator, Inc., et al., Opinion 453, 97 FERC ¶ 61,033 (2001), order on reh'g, Opinion No. 453-A, 98 FERC ¶ 61,141 (2002). On October 29, 2002, the Commission filed with the United States Court of Appeals for the District of Columbia Circuit, a voluntary request for remand of the pending appeals of the decisions in Opinion Nos. 453 and 453-A.

prices must be provided based on 110 percent of on-line variable operating expenses, plus start-up costs. In addition, TRANSLink's proposal contemplates that TRANSLink may designate must-run units and enter into separate agreements with generators to provide redispatch to protect system reliability. TRANSLink may also mandate changes in previously approved generation or transmission maintenance in emergency conditions, and shall reimburse the entity rescheduling its maintenance for the incremental costs of changing its maintenance schedule. TRANSLink will coordinate redispatch actions with Midwest ISO in accordance with protocols established between TRANSLink and Midwest ISO.

### ii. Intervenors' Comments

63. DENA argues that TRANSLink's proposed emergency redispatch provisions should be amended to specify the obligations that are imposed on generators and the applicable operating protocols, and that TRANSLink should be required to demonstrate that such provisions are consistent with comparable Midwest ISO requirements for generators. Detroit Edison maintains that TRANSLink fails to explain why a significant lag time should exist for the Midwest ISO to respond to emergency conditions. It submits that TRANSLink's emergency redispatch actions could affect the redispatch options open to Midwest ISO and that, therefore, TRANSLink's actions must, at a minimum, be coordinated with Midwest ISO's.

64. Wisconsin Electric states that it is not clear whether the proposed redispatch provisions will continue once Midwest ISO has provisions for congestion management in place, nor whether emergency redispatch may be implemented due to the fact that there is congestion on the TRANSLink transmission system. Wisconsin Electric requests clarification that TRANSLink's proposed emergency redispatch provisions will not be used as a congestion management mechanism and that they will terminate once Midwest ISO has submitted new congestion management provisions.

65. MEAN, Wisconsin Electric and Wisconsin TDUs argue that generators that respond to emergency redispatch should be required to provide service at cost unless it is established that they lack market power in the market for emergency redispatch service. They state that generalized market-based rate authority should not suffice to be able to charge market-based rates for emergency redispatch service.

### iii. TRANSLink's Answer

66. In its answer, TRANSLink states that pursuant to the April 25 Order, it will be responsible for maintaining the security of its facilities, subject to coordination with

Midwest ISO, and that responsibility will continue once Midwest ISO has a congestion management system in place. It explains that, although Midwest ISO is responsible for monitoring and directing reliability redispatch for the broad regional system, its control center systems do not monitor and protect all of the facilities that will be controlled by TRANSLink. Moreover, Midwest ISO will not have the capability to respond as quickly to local events as TRANSLink's control room operators. These capabilities and arrangements, according to TRANSLink, will give it the response capability necessary to address security measures in a real-time mode of operations, including rapid emergency response redispatch for reliability. It clarifies that its proposed redispatch provisions are not intended to address economic congestion that does not give rise to emergency conditions. Finally, TRANSLink states that it envisions that a generator may be compensated based on market-based rates only if it satisfies the Commission that it cannot exercise market power.

**iv. Discussion**

67. In the order we are concurrently issuing on the Midwest ISO's proposed changes to its OATT to generically reflect the operation of ITCs providing certain RTO functions on a delegated basis,[34] we clarify that in emergency situations, the ITC (or the transmission owner, depending on the case) may redispatch as the first line of defense and in the absence of RTO immediate action, but require that such redispatch must be limited to the period before such time that the RTO can take corrective action and must be closely coordinated with the RTO as soon as possible. TRANSLink's proposal appropriately limits TRANSLink's authority to initiate redispatch to emergency situations until Midwest ISO's congestion relief system or NERC TLR can be applied. However, TRANSLink's proposal does not provide for timely communication and coordination with the RTO, as we are requiring in our order on Midwest ISO's generic ITC provisions, nor have Midwest ISO or TRANSLink filed protocols providing for such coordination. In addition, we believe that the designation of must-run units is a process that will have sufficient lead time for coordination with Midwest ISO and should, therefore, occur pursuant to Midwest ISO's procedures for the designation of must-run units, once those are in place.

68. We agree with DENA that TRANSLink must specify the obligations that are imposed on generators and the applicable operating protocols. To the greatest extent practical, TRANSLink should adopt the comparable requirements and protocols used by

[34] See Midwest ISO, Docket No. ER03-86-000 being issued concurrently with this order.

Midwest ISO, including provisions for receiving bids and compensating generators, and must justify the necessity of any departures from those requirements and protocols.

69. Under TRANSLink's proposal, it will obtain pricing data from Midwest ISO if generators are submitting that data to Midwest ISO. Otherwise, TRANSLink will compensate generators for providing redispatch service based on either: (1) market-based bids; or (2) the generators' incremental costs to the extent that they do not have Commission-authorized market-based rate authority. We reiterate that TRANSLink should compensate generators for providing redispatch service on the same basis as the Midwest ISO does.

70. Currently, Midwest ISO does not operate a redispatch market and the Commission has recently accepted Midwest ISO's proposal to defer implementation of a redispatch market until its energy spot markets are operational, expected to occur in December 2003.[35] Based on this schedule, TRANSLink's alternative pricing provisions would become operative for its initial operation during the second half of 2003. Under these alternate pricing provisions, TRANSLink would compensate generators based on market-based bids pursuant to the generators' general market-based rate authority.

71. Currently, redispatch of the TRANSLink participants' resources, and of network customers' resources, is at cost-based rates. Under TRANSLink's proposal, it would procure redispatch service on a competitive basis from suppliers, including participants and other network customers, subject only to any conditions on their market-based rate authority. However, as we stated in GridSouth Transco, LLC, et al., "new market conditions and the potential for market power may arise when (as here) bid-based congestion markets are created; and we have required a fresh market power analysis prior to permitting market-based rates in bid-based markets operated by ISOs."[36] TRANSLink has not provided such a market power analysis to support the new competitive procurement of redispatch service that it proposes. Therefore, in the hearing ordered below, the participants should address the potential for generators to exercise market

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[35] See Midwest Independent Transmission System Operator, Inc., 99 FERC ¶ 61,346 (2002). See also Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,174 (2002). In the meantime, while implementation of Midwest ISO's redispatch market is deferred, Midwest ISO relies on the redispatch provisions of the individual transmission owners' OATTs and other redispatch arrangements that the transmission owners have in place.

[36] 96 FERC ¶ 61,067 at 61,299 (2001).

power in TRANSLink's market for redispatch service and options to mitigate market power in instances where the potential to exercise market power is likely.

72. We will, therefore, direct TRANSLink to file, within 60 days of the date of this order, revisions to its proposed redispatch provisions to: (1) provide for timely communication and coordination with the Midwest ISO; (2) limit its authority to designate must-run units only until Midwest ISO's procedures for the designation of must-run units are in place; (3) clarify the obligations that are imposed on generators and the applicable operating protocols, justifying any differences from the comparable requirements and protocols used by the Midwest ISO; (4) clarify that compensation for redispatch service will be on the same basis as Midwest ISO provides for comparable service, once Midwest ISO's markets are operational; and (5) provide protocols for timely communication and coordination with Midwest ISO regarding redispatch to maintain or restore reliability in emergency situations. In addition, consistent with Midwest Independent Transmission Operator, Inc.,[37] our acceptance of the proposed must-run provisions, as modified, is conditioned on TRANSLink' filing individual must-run agreements with the Commission under section 205 of the FPA, along with full support for the designation of the generator, the terms and conditions of the must-run contract, and the compensation provided thereunder.

## I. Tariff and Operating Agreement Conflicts

### i. TRANSLink's Proposal

73. Section 2.6 of proposed Attachment V.1 provides that any service provided under the Midwest ISO OATT using the transmission facilities of a TRANSLink participant that is not a public utility under the Federal Power Act and which has an operating agreement with TRANSLink shall not conflict with or be inconsistent with the provisions of said TRANSLink participant's operating agreement. In the event of any conflict or inconsistency arising between the Midwest ISO OATT and such operating agreement, the conflict or inconsistency shall be governed by and decided pursuant to the provisions of the operating agreement.

### ii. Intervenors' Comments

74. Lincoln Electric requests that this provision be clarified to provide that the operating agreement referenced is the participation agreement by which the participant transfers control of its facilities to TRANSLink or Midwest ISO, and not the participants

[37] 98 FERC ¶ 61,075 at 61,223, reh'g denied, 99 FERC ¶ 61,198 (2002).

network operating agreement associated with service it takes as a customer under the Midwest ISO OATT, and that such operating agreements must be filed under section 205 for Commission review. Wisconsin TDUs maintain that TRANSLink or Midwest ISO should be required to file under section 205 any terms that affect jurisdictional service provided by Midwest ISO so that the Commission may determine whether the Midwest ISO OATT remains just and reasonable.

#### iii. Discussion

75. We agree with Lincoln Electric that the applicable "operating agreement" for Section 2.6 of proposed Attachment V.1 - TRANSLink should be the participant's agreement providing for transfer of control of its facilities to TRANSLink or Midwest ISO, and related agreements. We also share the intervenors' other concerns. The operating agreement with a participant cannot automatically take precedence when conflicts exist between it and the Midwest ISO OATT. Rather, the Midwest ISO OATT should accurately reflect the service available pursuant to the underlying agreements through which participants transfer control of their facilities to TRANSLink or Midwest ISO. In addition, while we recognize that certain operating agreement provisions may reflect longstanding negotiated contractual arrangements or treaty or statutory obligations of the parties, and that the willingness or ability of some entities to participate in TRANSLink or Midwest ISO may hinge on particular agreed upon provisions in the operating agreement, we must balance the need to ensure independence of the RTO and operation of an efficient non-discriminatory transmission grid with the legal obligations and interests of the parties joining the RTO. To appropriately undertake this balancing, we will require TRANSLink to file, within 60 days of the date of this order, revised tariff sheets modifying Section 2.6 of proposed Attachment V.1 - TRANSLink to provide specific information relating to the provisions of the operating agreements with non-public utility participants where a conflict between these provisions and the Midwest ISO OATT could adversely affect the ability of a non-public utility participant to participate in TRANSLink or Midwest ISO. In addition, TRANSLink should provide a detailed explanation of why these provisions are essential. We will allow all interested parties an opportunity to comment upon these revisions upon submission of the compliance filing, and we will take further action on this issue at that time.

### J. Hearing and Settlement Judge Procedures

76. Our preliminary analysis indicates that TRANSLink's proposed schedules, as modified, have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept them for filing, nominally suspend them, make them effective December

24, 2002, subject to refund and, as to the issues not summarily resolved above, set them for hearing as ordered below.

77. While we are setting those issues not summarily resolved above for a trial-type evidentiary hearing, we encourage the parties to make every effort to resolve their differences before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and will direct that a settlement judge be appointed to assist the parties in reaching a settlement. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.[38] The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order, and every 60 days thereafter, concerning the status of settlement discussions. Based on these reports, the Chief Judge may provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) TRANSLink's proposed schedules and attachments to the Midwest ISO OATT, as modified pursuant to Ordering Paragraph (B) below, are hereby accepted for filing and suspended, to become effective December 24, 2002, subject to refund.

(B) TRANSLink is hereby directed to filed a revised tariff sheets, as directed in the body of this order, within 60 days of the date of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the reasonableness of TRANSLink's proposed schedules and attachments to the Midwest ISO OATT, as discussed in the body of this order. However, the hearing will be held in abeyance while the parties attempt to settle, as discussed in Ordering Paragraphs (E) and (F) below.

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[38]If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience. (www.ferc.gov - click on Office of Administrative Law Judges).

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2002), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. To the extent consistent with this order, the designated settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as possible.

(E) Within 60 days of the date of this order, the settlement judge shall issue a report to the Commission and the Chief Administrative Law Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts or, if appropriate, provide for a formal hearing by assigning the case to a presiding judge. If settlement judge procedures are continued, the settlement judge shall issue a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date of appointment of the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,
Deputy Secretary.

ATTACHMENT